

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF: )

**The City of Albertville** )

Albertville, Marshall County, Alabama )

Air Facility ID No. 711-0051-X002 )

CONSENT ORDER NO.

***PREAMBLE***

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, "the Department" or "ADEM") and City of Albertville (hereinafter, "Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), and the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

***STIPULATIONS***

1. The City of Albertville is the permitted owner and/or operator of the Air Curtain Incinerator (hereinafter, the "ACI") operating in Albertville, Marshall County, Alabama. The ACI is operating under the authority of ADEM Permit No. 711-0051-X002 (hereinafter, the "Permit"), issued on July 11, 2006.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§22-22A-1 through 22-22A-16, as amended.

3. Pursuant to Ala. Code §22-22A-4(n) (2006 Rplc. Vol.), the Department is the State air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23 (2006 Rplc. Vol.).

4. Permit Proviso 13 states that “[T]he owner/operator must perfect loading techniques to minimize visible emissions (smoke).”

5. Permit Proviso 14 states that “[T]he air curtain burner shall not be loaded such that any material protrudes above the air curtain.”

6. Permit Proviso 22 states:

This facility is subject to New Source Performance Standard (NSPS) 40 CFR Part 60 Subpart CCCC. This limits opacity emissions to 10% as measured by an EPA Reference Method 9 (6-minute average). The opacity limitation is 35% (6-minute average) during the start-up period that is within the first 30 minutes of operation.

### ***DEPARTMENT'S CONTENTIONS***

7. On September 14, 2011, the Department conducted an unannounced inspection of the Permittee's ACI (711-0051-X002) and during the inspection it was noted that the operating ACI burn chamber was being overloaded with wood waste, resulting in increased emissions. Visible emissions with a high six-minute average opacity of 29% were noted.

8. As a result of the overloading, wood materials had fallen out of the unit and were burning in front of the operational ACI. The overloading also caused a pile of wood chips located adjacent to the ACI to ignite, smolder and burn.

9. On September 29, 2011, the Department issued a Notice of Violation (NOV) to the Permittee for operating the ACI in violation of Permit Provisos 13, 14, and 22, pursuant to the September 14, 2011 Inspection. The NOV requested the Permittee to respond and explain why the ACI was being overloaded, thus resulting in a violation of the opacity limitation of 10%.

10. In a response to the NOV, dated October 24, 2011, the Permittee stated that "When the violation occurred, we were in the first hour, of the first day, of the start up process, in our operation of [the] air curtain incinerator for the first time in five months and were just trying to keep pace with our regular generated stream of vegetative wood waste."

11. It was noted that during the Department's inspection of the ACI on Wednesday, September 14, 2011, the Permittee's ACI Operator stated that the unit had resumed operation on Monday, September 12, 2011. He further stated to Department Personnel that operation on the day of the inspection had begun early that morning before the inspector arrived at the site at approximately 11:30 a.m. Central Time.

12. The Permittee consents to abide by the terms of the following Order and to pay the civil penalty assessed herein.

13. The Department has agreed to the terms of this Consent Order in an effort to resolve the violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above alleged violations. The Department has

determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

14. Pursuant to Ala. Code §22-22A-5(18)c., *as amended*, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. In arriving at this civil penalty, the Department has considered the following:

15. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: The Department considers the failure to properly operate the unit in a manner as to minimize emissions to be a serious violation.

B. THE STANDARD OF CARE: By overloading in such a manner as to not comply with the Permit, the Permittee did not exhibit a standard of care consistent with the requirements of the ADEM Admin. Code R.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department does not have knowledge of any economic benefits that the Permittee may have received by conducting open burning.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is not aware of any efforts made by the Permittee to minimize or mitigate the effects upon the environment due to its non-compliance.

E. HISTORY OF PREVIOUS VIOLATIONS: In 2009, the City of Albertville received a Consent Order with penalty for violations unrelated to those cited in this Consent Order.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

16. The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c., *as amended*, as well as the need for timely and effective enforcement and, based upon the foregoing and attached contentions, has concluded that the civil penalty herein is appropriate and consistent with the historical penalty range imposed by the Department for similar violations (see Attachment A, which is made a part of Department's contentions).

17. The Department neither admits nor denies Permittee's contentions, which are set forth below. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above violations. The Department has

determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

### ***PERMITTEE'S CONTENTIONS***

18. The Permittee neither admits nor denies the Department's contentions. The Permittee consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

### ***ORDER***

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)c., *as amended*, as well as the need for timely and effective enforcement, and the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this ORDER with the following terms and conditions:

A. The Permittee agrees to pay to the Department a civil penalty in the amount of \$6,000.00 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. The Permittee agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel  
Alabama Department of Environmental Management  
P.O. Box 301463  
Montgomery, Alabama 36130-1463

C. The Permittee agrees to submit a plan to the Department that details how it will demonstrate proper loading techniques for the ACI, not later than forty-five days from the effective date of this Consent Order.

D. The Permittee agrees to comply with the terms, limitations, and conditions of the Permit upon the effective date of this Consent Order and each every day hereafter.

E. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

F. That, subject to the terms of these presents and subject to provisions otherwise provided by statute, is intended to operate as a full resolution of the violations which are cited in this Consent Order.

G. The Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

H. For purposes of this Consent Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. The Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.



I. The Department and the Permittee agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and the Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

J. The Department and the Permittee agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

K. The Department and the Permittee agree that this Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

L. The Department and the Permittee agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

M. The Department and the Permittee agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management

Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

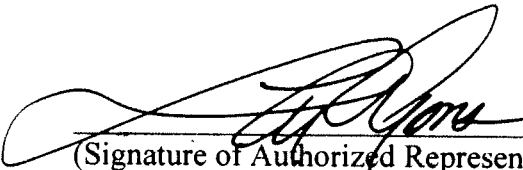
N. The Department and the Permittee agree that any modifications of this Order must be agreed to in writing signed by both parties.

O. The Department and the Permittee agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

CITY OF ALBERTVILLE

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

  
(Signature of Authorized Representative)

Lindsey Lyons  
(Printed Name)

Mayor  
(Printed Title)

Date Signed: 12 - 14 - 11

\_\_\_\_\_  
Lance R. LeFleur  
Director

Date Executed: \_\_\_\_\_

## Attachment A

**City of Albertville**  
**Albertville, Marshall County, Alabama**  
**Facility No. 711-0051-X002**

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
Failed to perfect loading techniques to minimize visible emissions (smoke)	1	\$ 500.00		
Failed to load air curtain incinerator properly	1	\$ 2,000.00	\$ 1,500.00	
Failed to operate within the 10% opacity limitation	1	\$ 1,000.00		
				\$ 1,000.00
<b>Totals</b>		\$ 3,500.00	\$ 1,500.00	

**Economic Benefit**

**Mitigating Factors \$ -**

**Ability to Pay \$ -**

**Other Factors**

**Civil Penalty \$ 6,000.00**

**Footnotes**

\* See the "Department's Contentions" of the Order for a detailed description of each violation and penalty factors